

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

RECODIFICATION OF)	Administrative Cause
HISTORIC PRESERVATION RULE)	Number: 07-002H
(312 IAC 20))	(LSA Document #07-140(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the final adoption of the recodification of the Historic Preservation rule article (312 IAC 20). This article includes 312 IAC 20-1 (Applications and Administration); 312 IAC 20-2 (Definitions); 312 IAC 20-3 (Membership and Meetings); and, 312 IAC 20-5 (Indiana Register). 312 IAC 20-4 is reserved and does not include content. The text of 312 IAC 20 is attached in the Appendix.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to recodifications. Where no amendments are proposed, and rules would be readopted in their current form, the Director of the Division of Hearings may approve preliminary action. The standard practice would be to readopt by article. The Commission retained authority to take final action on recodifications.

No amendments were proposed to the rule article, 312 IAC 20, and they would be readopted in their current form. The Director of the Division of Hearings approved preliminary action. 312 IAC 20 is now submitted for consideration as to final action.

B. RECODIFICATION ANALYSES UNDER IC 4-22-2-3.1

On February 13, 2007, Frank D. Hurtis, Jr., Chief of Survey and Registration for the Division of Historic Preservation and Archaeology, provided analyses for the proposed readoption to consider potential impacts to small businesses. His analyses provided:

The purpose of this memorandum is to provide the analyses anticipated by IC 4-22 with respect to the recodification of 312 IAC 20 pertaining to the Historic Preservation Review Board (the "HPRB"). 312 IAC 20 consists of rules 1 through 5. Rule 4 is "reserved", and contains no regulatory language, and is not considered further.

Rule 1 Application and Administration (312 IAC 20-1)

This rule outlines the general application of 312 IAC 20 and to clarify that the HPRB or its delegate is authorized to make licensure or sanctioning actions. The contact addresses for the HPRB, and for administrative review to the Natural Resources Commission of an action by the HPRB, are provided. The rule does not impose any requirements or costs on small businesses under IC 4-22-2.5-3.1.

Rule 2 Definitions (312 IAC 20-2)

This rule provides definitions with applicability to 312 IAC 20. The rule does not impose any requirements or costs on small businesses under IC 4-22-2.5-3.1.

Rule 3 Membership and Meetings (312 IAC 20-3)

This rule describes the membership and officers of the HPRB. The rule also provides a minimum period of 40 days before HPRB action for the filing of an application for a certificate of approval under IC 14-21-1-18. Within this 40-day period, the rule also requires that the Division complete the analyses, and forward it and the application, to the members at least five working days before final HPRB action. Experience by the professionals within the Division of Historic Preservation and Archaeology has demonstrated this timeframe is essential to preparing appropriate analyses and for HPRB consideration of applications and the Division analyses. Costs to small businesses or other regulated entities for the preparation of a certificate of approval are those resulting from IC 14-21-1-18. The timing requirements apply to small businesses and other regulated entities, as well as the Division, and they are justified for the orderly and considered dispositions of applications for certificates of approval. The rule does not impose any costs on small businesses under IC 4-22-2.5-3.1.

Rule 5 Indiana Register (312 IAC 20-5)

This rule describes the criteria of and process for inclusion or disqualification of a property on the Indiana Register of Historic Places. The rule helps assure that listed sites meet objective standards and have genuine cultural and historic significance to Indiana. The imprimatur of listing encourages an owner to manage a property in a manner that will preserve its historic integrity, but the process is not regulatory. Listing does not mandate a particular approach to managing a property, and disqualification of a listed site does not result in a penalty under this rule. The rule does not impose any requirements or costs on small businesses.

General Overview Concerning Comments and Complaints

In addition to the rule-specific descriptions provided above, the following general overview is provided. No complaints or comments have been documented concerning the implementation of 312 IAC 20. Article 20 has no special complexity. No difficulties are believed to have been encountered by the DNR in administering its rules or by small businesses in complying with its rules. 312 IAC 20 does not conflict with other federal, state or local laws and is an appropriate implementation of state statute. 312 IAC 20 is mostly procedural and helps clarify the statutory structure. Technology, economic conditions and other

factors have not changed in a way that would warrant a modification to 312 IAC 20.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

A “Notice of Intent to Readopt” was published in the Indiana REGISTER on February 28, 2007 as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 20 without changes. The notice provided that a person had 30 days to submit a written request to the Natural Resources Commission seeking to have a particular section of the rule be readopted separately from the general recodification. If such a request is made, the Commission would be required to complete the full rule adoption process for the section. No written request has been received. Where no request is received, the Commission may either submit the rule for filing with the publisher under IC 4-22-2-35 or elect the procedure for recodification under IC 4-22-2. The recommendation is that the Commission approval submittal of the rule for filing with the publisher.

Dated: April 2, 2007

Stephen L. Lucas
Hearing Officer

APPENDIX

ARTICLE 20. HISTORIC PRESERVATION REVIEW BOARD

Rule 1. Application and Administration

312 IAC 20-1-1 Applicability of review board article

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 1. This article governs the functions of the review board. *(Natural Resources Commission; 312 IAC 20-1-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399)*

312 IAC 20-1-2 Agency determinations and administrative review

Authority: IC 14-21-1-31

Affected: IC 4-21.5; IC 14-9; IC 14-21-1

Sec. 2. (a) Unless otherwise specified in this title, the review board (or a delegate of the review board) makes the initial determination for any license, sanction, or other order that is subject to IC 4-21.5.

(b) The mailing address for the review board is the division of historic preservation and archaeology. The address for the division is as follows:

Division of Historic Preservation and Archaeology
Department of Natural Resources
Indiana Government Center-South
402 West Washington Street, Room W274
Indianapolis, Indiana 46204.

(c) The commission is the ultimate authority under this article. A request to the commission for administrative review of an initial determination under subsection (b) must be addressed as follows:

Division of Hearings
Natural Resources Commission
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, Indiana 46204.

(Natural Resources Commission; 312 IAC 20-1-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399)

Rule 2. Definitions

312 IAC 20-2-1 Applicability

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 1. The definitions in this rule are in addition to those in IC 14 and 312 IAC 1 and apply throughout this article. (*Natural Resources Commission; 312 IAC 20-2-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399*)

312 IAC 20-2-1.7 “Certificate” defined

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1-18

Sec. 1.7. “Certificate” refers to a certificate of approval under IC 14-21-1-18. (*Natural Resources Commission; 312 IAC 20-2-1.7; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003*)

312 IAC 20-2-2 “Chair” defined

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1

Sec. 2. “Chair” means the chair of the review board. (*Natural Resources Commission; 312 IAC 20-2-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399*)

312 IAC 20-2-3 “Division” defined

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1-6

Sec. 3. “Division” refers to the division of historic preservation and archaeology established by IC 14-21-1-6. (*Natural Resources Commission; 312 IAC 20-2-3; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399*)

312 IAC 20-2-4 “Division director” defined

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21

Sec. 4. “Division director” means the director of the division. (*Natural Resources Commission; 312 IAC 20-2-4; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399*)

312 IAC 20-2-4.3 “Indiana register” defined

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1-9

Sec. 4.3. “Indiana register” means the Indiana register of historic sites and historic structures established under IC 14-21-1-9. (*Natural Resources Commission; 312 IAC 20-2-4.3; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003*)

312 IAC 20-2-4.7 “National Register” defined

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1-15

Sec. 4.7. “National Register” means the National Register of Historic Places established under 16 U.S.C. 470 et seq. and identified at IC 14-21-1-15. (*Natural Resources Commission; 312 IAC 20-2-4.7; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003*)

312 IAC 20-2-5 “Review board” defined

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1

Sec. 5. “Review board” means the historic preservation review board as established by IC 14-21-1. (*Natural Resources Commission; 312 IAC 20-2-5; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399*)

312 IAC 20-2-6 “State historic preservation officer” or “SHPO” defined

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1

Sec. 6. “State historic preservation officer” or “SHPO” means the director of the department. (*Natural Resources Commission; 312 IAC 20-2-6; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400*)

Rule 3. Membership and Meetings

312 IAC 20-3-1 Membership

Authority: IC 14-21-1-31

Affected: IC 14-21-1-20

Sec. 1. (a) The review board shall be appointed as provided in IC 14-21-1-20.

(b) If a vacancy occurs in the review board, the SHPO shall appoint a successor to serve for the remainder of the vacated term.

(c) At the end of the term of a member, the SHPO may reappoint the person whose term has expired or appoint a new member of a full three (3) year term.

(d) The staggered terms established under 310 IAC 10-1-3, before its repeal, shall continue in the same sequence under this section. (*Natural Resources Commission; 312 IAC 20-3-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400*)

312 IAC 20-3-2 Officers

Authority: IC 14-21-1-31

Affected: IC 14-21-1

Sec. 2. (a) The state historic preservation officer is the chair of the review board.

(b) The review board shall elect officers, other than the chair, from the membership of the review board during the first meeting of a calendar year. The descriptions and designations of these officers are as determined by the review board. (*Natural Resources Commission; 312 IAC 20-3-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400*)

312 IAC 20-3-3 Submission of application before review board meeting

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 3. (a) A person who seeks a certificate must file a completed application, on a division form, at least forty (40) days before the meeting of the review board during which the application is to be considered.

(b) The completed application and any analysis and recommendations by the division shall be mailed to members of the review board at least five (5) working days before the meeting.

(Natural Resources Commission; 312 IAC 20-3-3; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003)

Rule 4. (Reserved)

Rule 5. Indiana Register

312 IAC 20-5-1 Applicability of rule for Indiana register of historic sites and structures

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1-9

Sec. 1. This rule governs matters pertaining to the register of Indiana historic sites and historic structures established under IC 14-21-1-9. *(Natural Resources Commission; 312 IAC 20-5-1; filed Sep 19, 2003, 8:17 a.m.: 27 IR 452)*

312 IAC 20-5-2 Criteria for eligibility on the register

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 2. A site, district, building, structure, or object is eligible for inclusion in the Indiana register if it does each of the following:

- (1) Possesses local, state, or national significance in Indiana history, architecture, archaeology, engineering, or culture.
- (2) Demonstrates sufficient integrity of location, setting, design, workmanship, and materials. Feeling and association are factors that may be considered.
- (3) Satisfies at least one (1) of the following:
 - (A) Is associated with events who have made a significant contribution to national, state, or local history.
 - (B) Is associated with individuals who have made significant contribution to the nation, state, or local community.
 - (C) Embodies distinctive characteristics of a type, period, or method of construction.
 - (D) Represents the work of a master.
 - (E) Possesses high artistic values.
 - (F) Has yielded, or will likely yield, information important in the archaeological knowledge of the prehistory or history of the state or nation.

(Natural Resources Commission; 312 IAC 20-5-2; filed Sep 19, 2003, 8:17 a.m.: 27 IR 452)

312 IAC 20-5-3 Eligibility exemptions

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 3. (a) Except as provided in subsection (b), a structure or site cannot be included in the Indiana register if the structure is any of the following:

- (1) Moved from its original location.
- (2) A reconstructed historic building.
- (3) Primarily commemorative in nature.
- (4) An archaeological site where the contextual integrity is significantly altered.
- (5) A structure or site where the significance was achieved within the past fifty (50) years.

(b) A structure or site otherwise disqualified under subsection (a) may be included in the Indiana register if it is either of the following:

- (1) An integral part of a district that meets the criteria described in section 2 of this rule.
- (2) Falls into at least one (1) of the following categories:
 - (A) A building or structure removed from its original location but that is a rare surviving resource associated with an historical person or event.
 - (B) A reconstructed building that is accurately executed in a suitable environment and presented in a dignified manner.
 - (C) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance.
 - (D) A property that has achieved significance within the past fifty (50) years if it is of exceptional significance in the historic, architectural, archaeological, or cultural development of the state or nation.
 - (E) An archaeological site where the contextual integrity has been altered by natural forces or human activity but which may yield pertinent or quality cultural, biological, fauna, and floral data regarding cultural patterns, processes, or activities significant in our past.

(Natural Resources Commission; 312 IAC 20-5-3; filed Sep 19, 2003, 8:17 a.m.: 27 IR 453)

312 IAC 20-5-4 Listing and removal of properties from the Indiana register

Authority: IC 14-21-1-31

Affected: IC 4-21.5; IC 14-9; IC 14-21-1-17

Sec. 4. (a) Additions and removals from the Indiana register are governed by IC 14-21-1-17, 312 IAC 2-3-1, and this section.

(b) The Indiana register includes any site listed by the board:

- (1) on the effective date of this rule; or
- (2) under this section.

(c) A property included on the National Register after the effective date of this rule is also automatically listed on the Indiana register unless:

- (1) the board or division otherwise specifies; or
- (2) the listing is made unilaterally by the federal government without approval by the board.

(d) This subsection governs petitions to list a property on the Indiana register, including the following:

(1) A person may, in writing, petition the division to list a site on the Indiana register.

The petition must include adequate photographic and written documentation to support listing, including the significance of the property and its current physical condition.

(2) If the division determines the property meets the minimum criteria for listing, the division will issue a letter to indicate the property is being considered for listing and providing at least thirty (30) days for comment or objections to the following persons:

- (A) The property owner.
- (B) The chief elected official.
- (C) The board of county commissioners.
- (D) Any other person who requests notification.

(3) If an objection is not received within the comment period, without intervention of the board, the division shall list the property on the Indiana register and notify the persons described in subdivision (2).

(4) If timely objections are received, a designated member or members of the board will conduct a hearing under 312 IAC 2-3-1 to consider the objections. The board shall consider the recommendations of any hearing officer before determining whether to list the property.

(e) A property may be removed from the Indiana register if it either:

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(1) ceases to demonstrate the characteristics that originally made the property eligible for the Indiana register; or

(2) was listed as a result of a procedural error during the listing process.

(f) Administrative review of a determination under subsection (b) is governed by IC 4-21.5 and 312 IAC 3-1. (*Natural Resources Commission; 312 IAC 20-5-4; filed Sep 19, 2003, 8:17 a.m.: 27 IR 453*)